

### REMARKS

Claims 16-35, 38-65, 68-98, and 101-111 are now pending and stand rejected. The summary page of the office action erroneously indicates that claims 68-89 are pending instead of claims 68-98. Claims 112-141 are withdrawn from consideration. By this amendment, the scope of all the claims is amended. Applicant is submitting a Request for Continued Consideration ("RCE") with this Preliminary Amendment. By this Preliminary Amendment, Applicant has amended the claims and demonstrates reasons why the claims pending here are distinct from the asserted art.

#### ***35 U.S.C. Section 103 Rejections***

In paragraph 2 of the office action, the Examiner maintains the rejections of claims 16-42, 45-72, 75-105, 108-111 as unpatentable over Shavit et al. (US 4,799,156, hereinafter "Shavit") in view of Smith (US 5,450,123), and further in view of Lockwood (US 5,576,951, hereinafter "Lockwood"). In paragraph 3 of the office action, claims 43-44, 73-74, and 106-107 are rejected under 35 U.S.C. 103(a) as unpatentable over Shavit, Smith and Lockwood, as applied to claims 16, 45, and 77 above, and further in view of Donald et al. (U.S. 5,053,956).

Again, Applicant respectfully requests the Examiner to consider the recent standard for evaluating obviousness. The Supreme Court set this standard for evaluating obviousness in its recent decision (*KSR International Co. v. Teleflex Inc. et al.* (550 U.S. 127 S. Ct. 1727 (2007))) to be "expansive and flexible" and "functional." But, the standard is not controlling. Instead the various noted factors only "can" or "might" be indicative of obviousness based on the facts. The Supreme Court in *KSR* enunciated the following principles:

"[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, Section 103 likely bars it patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill....[A] court must ask whether **the improvement is more than the predictable use of prior art elements according to their established functions.**

The Supreme Court in *KSR* also stated that:

a patent composed of several elements is not proved obvious merely by demonstrating that **each of its elements was independently known in the prior art.**

The Supreme Court in *KSR* has also stated that:

[o]ften, it will be necessary for a court **to look to interrelated teachings of multiple patents**; the effects of demands known to the design community or present in the market place.

Further, the Supreme Court stated in *KSR* that:

The Court [in *United States v. Adams*, 383 U.S. 39, 51-52 (1966)] relied upon the corollary principle **that when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.**

Even with the *KSR* standard, Applicant notes that the Examiner continues to combine at least three if not four references with teachings that are not interrelated but instead teach away from the combination suggested by the Examiner because they are simply independently known in the prior art. The Examiner maintains that combining the references yields predictable results. Applicant respectfully submits that a combination of the references is first not obvious, and even if it was, the combination falls short of the claims at issue. The Examiner is respectfully requested to reconsider her rejections based on the arguments presented here.

First, consider the primary reference, Shavit, with respect to which the Examiner indicates the following:

Shavit differs from claims 16-35, 38-42, 45-65, 68-72, 75-98, 101-105, and 108-111 in that it does not specify a dynamic video system. However, Smith teaches the desirability of including a camera at a representative terminal so that direct, real-time, point-to-point video communication can take place between a customer and the representative (col. 3, lines 26-27; col. 4, lines 25-28; moving pictures are communicated via AT&T 2500 video telephone sets, col. 1, lines 27-28) such that it would have been obvious to an artisan of ordinary skill to incorporate such dynamic, full-motion video communication, as taught by Smith, within the system of Shavit in order to provide a real-time video as well as audio communication between the customer and representative. In this way, a more realistic face-to-face meeting can take place.

Further, Smith teaches the desirability of allowing buyer access to a vendor supplied video image stored in a video file server (video source and database 6) for enhancing sales communication with the use of video (col. 1, line 51 - col. 3, line 27) such that it would have been obvious to an artisan of ordinary skill to incorporate such use of video, as taught by Smith, within the method of Shavit in order to allow a buyer to view the desired goods or services.

The combination of Shavit and Smith further differs from the claims in that although Smith provides for supplying customized information (col. 5, lines 48+), it does not specify storing in memory identification data of an interested buyer in association with a designated area of commercial interest. However, Lockwood teaches the desirability of having a central processor 222 select an appropriate vendor-supplied data source associated with the customer's request, col. 18, lines 51-54; col. 19, lines 52-53; col. 20, lines 36-39, for output to the customer as a high-resolution audio-visual presentation ; col. 18, lines 9-56; col. 19, lines 13-24, 52-57) such that it would have been obvious to an artisan of ordinary skill to incorporate such vendor selection, as taught by Lockwood, within the combination of Shavit and Smith in order to provide buyers with a more efficient means of selecting goods and services from a plurality of vendors by providing a customized audio/video presentations based on the buyer's area of interest. In this way, the buyer need not manually select each distributor from which information is desired.

First of all, in addition to not providing a dynamic video system (acknowledged by the Examiner), Shavit does not teach selectivity by a processor in the context of the claimed inventions. In Shavit, the IMM system does not selectively select vendors nor any data such as video data based on some criteria considered by the IMM system. In Shavit, one party to the transaction is specifically selected by the other party to the transaction. Shavit's system does not teach determining and selecting a vendor or vendor data (including video) related to an area of interest expressed by a prospective buyer from data provided by an appropriate vendor. The Examiner fails to recognize this major distinction and erroneously equates Shavit's system with the Applicant's system. The Examiner relies on Lockwood for teaching the desirability of having a central processor select an appropriate vendor, yet that cannot fill a void that is not even recognized by Shavit. In Shavit, one party to a transaction is already selected by the other party. There is no need or basis expressed in Shavit, which begs a combination with Lockwood and

requires the central processor to select an appropriate vendor or relevant data. The desired vendor is already known to Shavit's buyer and indicated by the buyer.

On page 6 of the office action, the Examiner indicates that the rejection relies on Lockwood to teach selectivity. Yet, why, when a vendor is already known and selected by the buyer in Shavit, would it be obvious for one of ordinary skill in the art to look to further introduce the feature from Lockwood, whereby the central processor selects a vendor. Accordingly, based on the current legal construct, Shavit provides no reason that would lead one of ordinary skill to combine the two references in the manner that the Examiner suggests, much less to yield a predictable result as indicated by the Examiner. If anything, the respective teachings in Shavit (of the buyer selecting the vendor) and in Lockwood (of the central processor selecting the vendor) contradicts and teaches away from each other.

Moreover, the Examiner asserts sections in Lockwood, to satisfy the claimed recitation that the central processor selects an appropriate vendor, which are quite distinct from what is claimed. In Lockwood, the customer requests audio-visual presentations that are relayed from the voice response system to the central processor 222, which selects the appropriate data sources for transmission to the local cable television company 210 and routed via the cable network 281 to the customer's terminal 202. The customer, upon viewing the presentation, which includes a menu, selects from the displayed menu on the video screen, his next selection, which is then entered on the keypad and is transmitted to the central data processing center for assembly of the requested informational segment. Nowhere does Lockwood describe a customer simply entering request data, and the central processor fulfilling that request by first selecting an appropriate vendor. In addition, it is noted that U.S. Patent No. 5,576,951 has a filing date of March 16, 1994, after the effective filing date of the present application, and Lockwood's U.S. Patent No. 5,576,951 is a continuation-in-part of earlier filed applications, which have a specification that is far more limited. Thus, only the subject matter of the earlier filed applications are prior art to Applicant's present application. Accordingly, the Examiner is requested to withdraw the rejection of the rejected claims.

The Examiner further indicates that:

Shavit discloses a commercial transaction communication system (Interactive Market Management System 50), the system being

adapted for use with an on-line computer service (Shavit provides for access to a variety of information sources and database providers, e.g. Dialog; col. 7, lines 9-15) comprising:  
an interface (personal computers 62, 64 and communication interface 79; col. 5, line 28 – col. 6, line 51);  
an audio system (interactive conversational service; col. 7, line 58 – col. 8, line 4);  
a text system (mailbox service, col. 8, lines 12-22; col. 11, line 52 – col. 12, line 18; transaction service, col. 12, line 42 – col. 14, line 21, facsimile service, col. 14, line 22);  
a storage memory (database stores subscriber data and request data; col. 7, lines 23-46; col. 25, lines 28-50);  
a control computer unit (central processor 80) utilizing request data entered by an active buyer to seek responses from a select vendor from a plurality of vendors (one or more Request for Quotations (RFQ's) **are entered by the buyer to seek bids from one or more distributors**; col. 13, lines 10-34) and directing an electronic mail message relating to the select vendor to the active buyer via the on-line computer service (system 50 provides email messages to each user, including bids in response to requests for particular goods or services input by the user, promotions, and other information of particular interest to buyers; col. 11, lines 52 – col. 12, line 26; col. 13, lines 25-27; col. 18, lines 44-49; col. 20, lines 2-39.

The very text at column 13, lines 10-34, that is pointed to by the Examiner, discloses that a buyer may enter or modify a request for a bid by a buyer and the system prepares a bid by recalculating the price and the terms of the bid in order to submit an automatic bid. This does not satisfy the claimed recitations. Therefore, even if the Shavit is combined with the other references asserted by the Examiner, the combination would not result in the claimed inventions.

Claims 43-44, 73-74, and 106-107 are distinct at least for the reasons by which the independent claims (16, 45, and 77) from which they depend are distinct. They recite elements not met by a combination of Shavit, Smith, and Lockwood as demonstrated above, and further with Donald, on which the Examiner additionally relies, simply for coupling an interactive video display system with an inventory control system.

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Favorable allowance of all the rejected claims 16-35, 38-65, 68-98, and 101-111 is respectfully requested. In the event outstanding issues remain, the undersigned respectfully requests the Examiner to contact the undersigned.

Respectfully submitted,

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